

MAR 12 2013

SENATE RESOLUTION

REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF THE KAPIOLANI PARK TRUST TO EVALUATE ITS GOVERNANCE STRUCTURE AND IDENTIFY THE PERMISSIBLE USES OF THE PARK LANDS, INCLUDING DELINEATING ANY LIMITATIONS ON COMMERCIAL OR OTHER INCONSISTENT USES THAT MAY FALL OUTSIDE THE SCOPE OF THE TRUST'S PURPOSE OR MAY CONSTITUTE WASTE OF THE TRUST PROPERTY.

1 WHEREAS, Kapiolani Park is a popular venue for various
2 public functions, including amateur sporting events, cultural
3 fairs, and family gatherings that are all well attended by
4 Hawaii residents and visitors; and

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6 WHEREAS, there is a significant public interest in
7 maintaining the existing nature and character of Kapiolani Park
8 through the preservation of its open space for the public's
9 benefit in perpetuity as well as the park's historic value; and

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11 WHEREAS, in 1896, Kapiolani Park was established as a
12 public charitable trust to be maintained as a free public park
13 and recreation ground for its sole beneficiaries, the members of
14 the general public; and

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16 WHEREAS, the members of the Honolulu City Council act as
17 trustees of the Kapiolani Park Trust and are responsible for
18 faithfully executing trust duties as directed under the trust
19 instrument; and

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21 WHEREAS, Kapiolani Park is among the most valuable land in
22 the State due to its vast expanse of open space, close proximity
23 to Waikiki Beach, and frequent exposure to a high volume of
24 residents and visitors; and

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26 WHEREAS, these factors contribute to frequent pressure from
27 private entities and the City and County of Honolulu and its
28 permittees who seek opportunities to conduct commercial or other
29 activities that may be inconsistent or contrary to the purposes
30 of the trust on Kapiolani Park lands; and
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1 WHEREAS, the Hawaii Supreme Court held in Kapiolani Park
2 Preservation Society v. City and County of Honolulu, 69 Haw.
3 569, 751 P.2d 1022 (1988), that it is not within the power of
4 any legislative body to terminate a charitable trust, change its
5 administration on grounds of expediency, or seek to control or
6 amend the disposition of its property under cy pres doctrines;
7 and

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9 WHEREAS, furthermore, the court held that the City and
10 County of Honolulu had no power to execute leases or deeds for
11 part of or all of Kapiolani Park land; and

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13 WHEREAS, previous questions regarding the use of the park
14 lands have led to establishing a standard whereby any use must
15 demonstrate a nexus with the use and care of Kapiolani Park; and

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17 WHEREAS, in City and County of Honolulu v. Warren Price,
18 III et al., (1991), the Circuit Court judge held that the City's
19 use of Kapiolani Park for a nursery was a permissible use under
20 the trust "so long as the nursery and plants [stored there] are
21 used for city park purposes"; and

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23 WHEREAS, the recent proposal from the City and County of
24 Honolulu to use land next to the Waikiki Aquarium to develop a
25 new ocean safety substation has raised concerns of whether the
26 proposal is a permissible use of park property under the trust
27 instrument; and

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29 WHEREAS, a decision on this matter will be based on whether
30 the use of park property for an ocean safety substation
31 demonstrates a sufficient nexus with the use and care of the
32 park; and

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34 WHEREAS, furthermore, this decision has the potential of
35 establishing a precedent regarding how the park space may be
36 used in the future; and

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38 WHEREAS, the State has a significant interest in ensuring
39 that the Kapiolani Park Trust is executed in a manner that is
40 consistent with the trust's purpose; and

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42 WHEREAS, furthermore, the State has a significant interest
43 in ensuring that the decisions made by the Honolulu City Council
44 regarding the park's permissible uses are made in the best



1 interests of its beneficiaries and are consistent with the
2 limitations of the trust instrument and the park's carrying
3 capacity; and
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5 WHEREAS, defining commercial and other inconsistent uses
6 and burdens and outlining limitations on such uses within the
7 park should be addressed to better enable the general public, as
8 sole beneficiary, and the members of the Honolulu City Council,
9 as trustees, to differentiate between acceptable public and
10 private uses of Kapiolani Park and maintain transparency and
11 accountability among the trustees and beneficiaries; now,
12 therefore,
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14 BE IT RESOLVED by the Senate of the Twenty-seventh
15 Legislature of the State of Hawaii, Regular Session of 2013,
16 that the Auditor is requested to conduct an audit of the
17 Kapiolani Park Trust to evaluate its governance structure and
18 identify the permissible uses of the park lands, including
19 delineating any limitations on commercial or other inconsistent
20 uses that may fall outside the scope of the trust's purpose or
21 may constitute waste of the trust property; and
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23 BE IT FURTHER RESOLVED that the Auditor is requested to
24 report findings and recommendations, including any proposed
25 legislation, to the Legislature no later than twenty days prior
26 to the convening of the Regular Session of 2014; and
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28 BE IT FURTHER RESOLVED that certified copies of this
29 Resolution be transmitted to the Auditor, Mayor of the City and
30 County of Honolulu, Chairperson of the Honolulu City Council,
31 Director of the Department of Parks and Recreation of the City
32 and County of Honolulu, and Board President of the Kapiolani
33 Park Preservation Society.
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OFFERED BY: CPTM Hee

